

In The Matter Of:
*United States of America ex rel. James R. Berkley v.
Ocean State, LLC, et al.*

*Eric Thompson
March 21, 2024*



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Eric Thompson
 March 21, 2024

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<p style="text-align: right;">Page 69</p> <p>1 you if I addressed it to the board, it would have 2 been sent to the full board. 3 Q. So if you sent this email, it would -- 4 A. It would go to the nine members of the 5 board that I went through earlier. 6 Q. Okay. All right. This is Exhibit 12. 7 Do you recognize this document, sir? 8 A. Yes, I do. 9 Q. And did you draft this document? 10 A. I did. 11 Q. Did anyone else assist you in drafting 12 this document? 13 A. Yeah. We had -- I ran it by Brian 14 Belmont. And, also, I did seek some help from 15 Reed Smith just to read over it. Correct. 16 Q. All right. But you drafted the document? 17 A. Oh, yeah. I mean, I didn't draft every 18 single word in here, but I drafted the majority of 19 this. Correct. 20 Q. Well, what did you -- 21 A. -- including the Excel schedule. 22 Q. Okay. Sorry. 23 What did you not draft? 24 A. Oh, I don't recall. I mean, I don't 25 know, but I know I spent a ton of time on it.</p>	<p style="text-align: right;">Page 71</p> <p>1 board on where we were with PPP. 2 Q. So at the top, it says, "Regarding 3 Fyzical's eligibility to receive CARES Act PPP 4 funding." 5 A. Yes. 6 Q. And then throughout the document it 7 refers to Fyzical? 8 A. Correct. 9 Q. Who were you referring to when you used 10 the term Fyzical? 11 A. Fyzical Acquisition Holdings. 12 Q. All right. So this is specific to 13 Fyzical Acquisition Holdings? 14 A. Correct. 15 Q. As opposed to some other Fyzical entity? 16 A. Correct. It's specific to that. 17 Q. All right. So under number 1, "Fyzical's 18 eligibility to receive funding," where did you get 19 the information stated here under number 1? 20 A. From -- I believe it was from the SBA 21 guidelines. But we were getting information from 22 a lot of different sources, because APTA was 23 putting out a lot of stuff. There's a dental firm 24 I follow, they put out a lot of stuff. 25 But overall, I mean, it was -- we were</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. All right. And it's dated May 6th, 2020. 2 A. Correct. 3 Q. Is that when you drafted this document? 4 A. That's when the document was going out to 5 the board. 6 Q. All right. When did you start drafting 7 this document? 8 A. I don't -- it was probably in -- I mean, 9 obviously, I didn't finish the document in a day, 10 so it would be sometime in April. 11 Q. Was it after the PPP application? 12 A. I don't recall. 13 Q. So you said this was sent to the board, 14 right? 15 A. Yes. 16 Q. Other than the board, did it go to anyone 17 else? 18 A. I don't recall. I don't think there 19 would have been a reason to, but I -- definitely 20 it would have been sent to the board. 21 Q. But you just can't say one way or another 22 if it went to anyone other than the board? 23 A. No. I mean, if -- I don't know if I 24 copied someone on the email or not. I don't know. 25 But it was drafted because I wanted to educate the</p>	<p style="text-align: right;">Page 72</p> <p>1 swimming in information at that point. 2 Q. All right. And then the second 3 paragraph, at the bottom of the second paragraph, 4 it refers to "any business concern operating as a 5 franchise." Do you see that? 6 A. Yes. 7 Q. How did you define -- how do you define 8 the term "business concern"? Or does that mean 9 Fyzical Acquisition Holdings, or something else? 10 MR. WEEKS: Objection to form. Calls for 11 a legal conclusion. 12 But you can answer in your own personal 13 capacity. 14 BY MR. RENNER: 15 Q. When you fill out this memo, you know -- 16 A. Yeah. 17 Q. And at the time of the application, in 18 your mind, how did you define the term "business 19 concern"? 20 MR. WEEKS: Objection to form. This is a 21 quote from the SBA guidance. He didn't write 22 that. 23 MR. RENNER: I'm not saying he wrote it. 24 I'm just saying, in his mind, what does 25 "business concern" refer to.</p>

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<p>1 MR. WEEKS: Objection to form. 2 A. Anything that -- I would say it's 3 anything that involves a franchise brand. So 4 Fyzical Acquisition Holdings we consider to be the 5 franchise brand. 6 BY MR. RENNER: 7 Q. All right. So in your mind, is it 8 accurate to say that business concern referred to, 9 you know, what, all of the Fyzical entities 10 underneath Fyzical Acquisition Holdings? 11 MR. WEEKS: Objection to form. 12 A. There is -- what this is is the 13 affiliation waiver, and it was for the franchise 14 brand. And, yes, Fyzical Acquisition Holdings 15 is -- did deserve the waiver underneath that 16 definition. 17 BY MR. RENNER: 18 Q. All right. How did you come to that 19 conclusion that Fyzical Acquisition Holdings 20 deserved a waiver? 21 A. Because that's what -- 22 MR. WEEKS: Objection. Objection to 23 form. 24 Go ahead. And I'm just going to caution 25 you not to reveal anything that implicate</p>	<p>1 document here refers to an interim final rule. 2 And if you look at Exhibit 13 on the second page, 3 at the footnote there, it refers to the section of 4 the CARES Act here that's referenced in your memo. 5 Did you refer to this document when 6 preparing your memo, Exhibit 13? 7 A. Yes. It was one of several documents 8 that -- that was involved in drafting this 9 document, in drafting the document that went to 10 the board. 11 Q. All right. It says here, "Business 12 concern operating as a franchise." Right? 13 A. Yes. Yes, it does. 14 MR. WEEKS: Where are you pointing? 15 MR. RENNER: In the memo. 16 MR. WEEKS: Okay. 17 BY MR. RENNER: 18 Q. So did you give any thought to whether or 19 not Fyzical Acquisition Holdings was operating as 20 a franchise as opposed to being merely a holding 21 company? 22 A. I view it -- it is the franchise. It's 23 the one who owns it. 24 Q. Did you give any thought, though, to 25 whether or not, you know, a holding company -- the</p>
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<p>1 conversations with counsel. You can answer in 2 your own personal capacity if you landed at 3 that conclusion. 4 A. Yes. The SBA franchise identifier code 5 is where -- I specifically found that out on the 6 internet when I went to go search for our 7 franchise brand. 8 BY MR. RENNER: 9 Q. Well, that wasn't -- so that wasn't 10 really my question. My question was -- 11 MR. RENNER: Well, can you read back my 12 last question, please. 13 (Record read back.) 14 MR. WEEKS: So that's the question. 15 A. So can you state that again, please? 16 BY MR. RENNER: 17 Q. Yeah. How did you come to the 18 determination that Fyzical Acquisition Holdings 19 deserved a waiver from the affiliation rules? 20 A. Because to me, it's pretty clear there. 21 Operating as a franchise, Fyzical Acquisition 22 Holdings is the business concern that's operating, 23 and we have the SBA identifier code. 24 Q. All right. I'm going to show you 25 Exhibit 13. There's a footnote there. Well, the</p>	<p>1 distinction between a holding company as opposed 2 to an operating company, was that part of your 3 thought process? 4 MR. WEEKS: Objection to form. 5 A. Again, I just view Fyzical Acquisition 6 Holdings as the brand. That's even what I get 7 audited on. I mean, that's my parent. That is 8 Fyzical. 9 BY MR. RENNER: 10 Q. All right. I'm going to show you 11 Exhibit 14. And if you could turn to page 10. 12 And, again, these are my highlights in 13 here, yellow highlights. 14 So your memo that's Exhibit 12 refers to 15 Response Number 23 in the SBA Frequently Asked 16 Questions. And it says what you say, "Addresses 17 the eligibility of franchise operations for PPP 18 loan proceeds." 19 A. Yes, I've read it. 20 Q. All right. So your memo, Exhibit 12, at 21 the bottom of the first page, you know, you refer 22 to Response Number 23. 23 A. Correct. 24 Q. Right. And then you say, Response 23 25 addresses the eligibility of franchise operations</p>

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1 reviewed related to the PPP loan eligibility, how 2 confident were you when you submitted the loan 3 application that Fyzical was eligible to receive 4 the loan?	1 or waive? 2 MR. WEEKS: We will read. 3 MR. RENNER: Yeah, we'll need a 4 signature. 5 THE COURT REPORTER: And ordering 6 transcripts? 7 MR. WEEKS: Yes, please. 8 MR. RENNER: Yes. 9 THE COURT REPORTER: Who's ordering the 10 original? 11 MR. RENNER: That would be me, I guess. 12 (Thereupon, this deposition was concluded at 13 1:05 p.m. Reading and signing were not waived.)
12 MR. WEEKS: All right. I have nothing 13 further. 14 MR. RENNER: I just have a few 15 follow-ups. 16 REDIRECT EXAMINATION 17 BY MR. RENNER: 18 Q. Did you ever seek legal counsel regarding 19 what's been called the franchise waiver? 20 MR. WEEKS: Objection to form. 21 You can answer yes or no, but don't 22 reveal anything -- 23 BY MR. RENNER: 24 Q. And by "you," I mean -- 25 MR. WEEKS: -- you talked to counsel	16 17 18 19 20 21 22 23 24 25
Page 166	Page 168
1 about. 2 BY MR. RENNER: 3 Q. -- Fyzical? 4 A. Yes. 5 Q. Okay. You just testified regarding the 6 SBA, various follow-ups about corporate structure. 7 Do you remember that? 8 A. Yes. 9 Q. Were you saying the SBA or were you 10 talking about Webster followed up? 11 A. I don't recall the exact names on the 12 email, but I know that Webster was involved and 13 partnering with the SBA. I don't recall if the 14 SBA people were on it or if it was direct to 15 Webster. But it definitely was for the 16 forgiveness with the SBA. 17 Q. Are those emails in -- have they been 18 produced, to your knowledge? 19 MR. WEEKS: Objection to form. 20 Foundation. 21 A. I don't know. 22 MR. RENNER: All right. That's all I 23 have. 24 MR. WEEKS: I have nothing further. 25 THE COURT REPORTER: Do you guys do read	1 REPORTER'S DEPOSITION CERTIFICATE 2 STATE OF FLORIDA) 3 COUNTY OF SARASOTA) 4 I, SHARON F. BUTLER, Court Reporter, 5 certify that I was authorized to and did 6 stenographically report the deposition of ERIC 7 THOMPSON; (Pages 1 through 170) that a review of 8 the transcript was requested; and that the 9 transcript is a true and complete record of my 10 stenographic notes. 11 I further certify that I am not a 12 relative, employee, attorney, or counsel of 13 any of the parties, nor am I a relative or 14 employee of any of the parties' attorney or 15 counsel connected with the action, nor am I 16 financially interested in the action. 17 Dated this 2nd day of April, 2024. 18 19 20 21 22 23 24 25

1	UNITED STATES DISTRICT COURT	I N D E X
2	FOR THE DISTRICT OF RHODE ISLAND	EXAMINATION
3	UNITED STATES OF AMERICA)	
4	ex rel. JAMES R.)	4, 168
5	BERKLEY,)	152
	Plaintiffs,)	
5	vs.) No. 1:20-cv-00538	
6	OCEAN STATE, LLC, NEW)	
7	HARBOR CAPITAL FUND LP,)	
8	NEW HARBOR CAPITAL FUND)	
9	II LP, NEW HARBOR)	
10	CAPITAL MANAGEMENT LP,)	
11	BLUEPRINT TEST)	
12	PREPARATION, LLC,)	
13	FYZICAL ACQUISITION)	
14	HOLDINGS, LLC,)	
15	Defendants.)	
16	The CONFIDENTIAL DEPOSITION of JOHN ROSELLI,	
17	called for examination pursuant to the Rules of	
18	Civil Procedure for the United States District	
19	Courts pertaining to the taking of depositions,	
20	taken before MARY KAY ANDRIOPoulos, Certified	
21	Shorthand Reporter in the State of Illinois, at	
22	300 North LaSalle Street, Illinois, on	
23	March 14, 2024, at the hour of 10:00 a.m.	
24	REPORTED BY: MARY KAY ANDRIOPoulos, CSR	
25	LICENSE NO. 084-002248	

1

3

1	APPEARANCES:	1 ***CONFIDENTIAL DEPOSITION OF JOHN ROSELLI***
2	DUFFY & SWEENEY, LTD.	2 (Whereupon, ROSELLI Deposition
3	BY: MR. ERIC E. RENNER	3 Exhibit Nos. 1-19 were marked
4	321 South Main Street	4 for identification.)
5	Suite 400	5 (Whereupon, the witness was duly
6	Providence, Rhode Island 02903	6 sworn.)
7	401.455.0700	7 JOHN ROSELLI,
8	Erenner@duffysweeney.com	8 having been first duly sworn, was examined and
9	Representing the Plaintiffs;	9 testified as follows:
10	KIRKLAND & ELLIS, LLP	10 EXAMINATION
11	BY: MR. RYAN MOORMAN	11 BY MR. RENNER:
12	MR. PATRICK J. WEEKS	12 Q. Good morning, Mr. Roselli. My name is
13	300 North LaSalle Street	13 Eric Renner. I represent the plaintiff in a
14	Chicago, Illinois 60654	14 lawsuit pending in Rhode Island Federal Court.
15	312.862.3755	15 I'm here to today for your deposition.
16	Ryan.moorman@kirkland.com	16 I don't know if you've been deposed before or
17	Patrick.weeks@kirkland.com	17 not.
18	Representing the Defendants.	18 A. I have not.
19		19 Q. Never, okay.
20		20 So I'll just go over kind of some
21		21 ground rules.
22		22 I'm going to be asking you questions.
23		23 If you don't understand my question, please let
24		24 me know, I'll try to rephrase so that you
25		25 understand the question; is that okay?

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4



1 would not otherwise have been eligible under the
2 affiliation rules due to New Harbor's ownership?

3 A. Well, that would just be speculation,
4 because we did.

5 Like we had an SBA loan from Deerpath,
6 and we qualified waiving the affiliation
7 requirements, so --

8 Q. So did you -- when I say you, I mean
9 Ocean State -- did Ocean State undertake any
10 analysis as to whether or not the affiliation
11 rules would have precluded it from being
12 eligible if the SBIC didn't apply?

13 MR. MOORMAN: Let him finish his
14 question.

15 Are you done?

16 MR. RENNER: Yes.

17 THE WITNESS: So in the -- in the SBA
18 loan explanations that we got from the Small
19 Business Administration, it clearly stated in
20 there affiliation requirements are waived if you
21 already have credit from an SBIC accredited
22 lender.

23 So the affiliation waived the
24 affiliation requirements.

25 BY MR. RENNER:

1 program came out in like late March, and, you
2 know, you were applying like a week later.

3 They had -- they had hotlines that you
4 could call, e-mails you could send, and nobody
5 responded to any of those. They weren't even
6 picking up the phone.

7 So we had to go with, you know, the
8 legal counsel we were getting and --
9 MR. MOORMAN: Don't say anything you
10 talked about with lawyers.

11 THE WITNESS: And, you know, we had to
12 go with, you know, our banker's advice, and all
13 the webinars we were doing, and all the other
14 things we were doing, and it clearly stated in
15 the Small Business Administration explanation
16 documents that you can qualify one of two ways;
17 you know, you have 500 or less employees and a
18 certain amount less revenue, and in that
19 situation you have to identify your affiliates,
20 or if you're already SBIC qualified, you know,
21 getting money from an SBIC qualified lender, you
22 can waive the affiliation requirements.

23 BY MR. RENNER:

24 Q. All right. And so if the affiliation
25 rules weren't waived, you'd agree that there

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55

1 Q. Fair enough.

2 My question, though, is if the
3 affiliation rules weren't waived, would you
4 agree that Ocean State would not have been
5 eligible for a PPP loan?

6 A. I mean, it --

7 MR. MOORMAN: Objection, calls for
8 speculation, calls for a legal conclusion.

9 THE WITNESS: So again, we specifically
10 waived the affiliation, because we had SBA
11 lending, so there's no reason to speculate.
12 BY MR. RENNER:

13 Q. Maybe I'm not asking the question the
14 right way.

15 Let's -- well, so is it fair to say
16 then that because Ocean State determined that it
17 received SBIC funding, it did not undertake any
18 analysis as to whether or not it otherwise would
19 have been precluded under the affiliation rules
20 from eligibility?

21 A. So we did quite a bit of analysis and
22 consultation with the bankers that facilitated
23 the loan, our CFO did a whole bunch of webinars
24 to try to understand what was going on.

25 You have to remember, the PPP loan

1 would have been more than 500 employees, right,
2 if you take into account all of the New Harbor
3 --

4 A. Again, I don't know why we have to
5 speculate. That wasn't the case. They were
6 waived.

7 Q. I know, I mean, I know that's what
8 you're saying, but I just want to confirm,
9 though, that if you -- if Ocean State were to
10 have considered the employees of Ocean State
11 combined with the various other portfolio
12 companies owned by New Harbor, then that would
13 have been more than the 500 employee limit,
14 right?

15 A. Yes.

16 Q. Okay. And likewise --

17 A. And so that's why the portfolio
18 companies we had that weren't -- that didn't
19 have money from an SBIC lender, did not take PPP
20 money.

21 Q. Okay. And like for the same reason you
22 mentioned, the revenue amount would have
23 exceeded the revenue amount allowable --

24 A. Yes.

25 Q. -- for a PPP program? Okay.

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1 MR. MOORMAN: And my objection is the
2 same.

3 The corporate representative is not
4 going to articulate the basis of a legal
5 argument its lawyers are making in a future
6 filing in the midst of that discovery.

7 If he wants to say he's going to rely
8 on his lawyers, he can say he's going to rely on
9 his lawyers.

10 MR. RENNER: All right. So then for
11 No. 17, you know, which continues on to Page 25,
12 the same statement is made about further
13 documents. I assume that the same objection
14 applies?

15 MR. MOORMAN: Right. Like, this is a
16 -- we're going to file a motion for summary
17 judgment, a directed verdict motion, there's no
18 expectation to lay all of that out in an
19 interrogatory.

20 We've already provided significant
21 detail, and certainly no expectation for a
22 witness to testify about that, and I would add,
23 there is considerable detail in the
24 interrogatories already.

25 MR. RENNER: Yeah, the point of my

145 1 their lawyers.

2 You can answer his question in your
3 capacity as somebody who was involved in the
4 process about what you did to -- or what
5 provides the foundation for your reasonable
6 belief and the lawfulness of your conduct.

7 MR. RENNER: No, but I'm asking him as
8 the 30(b) (6) witness.

9 MR. MOORMAN: You can testify why from
10 a factual point of view based on what you did at
11 the time you had a reasonable belief that Ocean
12 State was acting lawfully.

13 MR. RENNER: I'm asking Ocean State.

14 MR. MOORMAN: I just said that.

15 THE WITNESS: I understand.

16 MR. RENNER: You said you.

17 MR. MOORMAN: I just said Ocean State.

18 THE WITNESS: Yeah.

19 MR. RENNER: No, you said you.

20 I mean, I think we're all on the same
21 page.

22 THE WITNESS: Yeah, yeah.

23 MR. RENNER: When you said you --

24 THE WITNESS: This references Blueprint
25 and Fyzical. I can't speak to that. I'm

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1 question is just to figure out what is the
2 universe of factual support for that defense?

3 MR. MOORMAN: It's in the
4 interrogatory, and if there's more documents
5 before the close of fact discovery, if we have
6 more information, we'll supplement the
7 interrogatory. It's a civil obligation to our
8 Rule 37.

9 BY MR. RENNER:

10 Q. All right. So Interrogatory 18 on
11 Page 25 asks Ocean State to state the basis for
12 its fifth affirmative defense that relators
13 claims are barred in whole or in part, because
14 defendants had a reasonable belief in the
15 lawfulness of their conduct, and in your
16 response -- supplemental response on Page 26,
17 among other things, it states that defendants
18 diligently investigated the applicable laws and
19 regulations in order to ensure the lawfulness of
20 their conduct.

21 So what specific laws and regulations
22 did Ocean State investigate?

23 MR. MOORMAN: So I'm going to caution
24 the witness not to disclose any communications
25 that he or anyone else at Ocean State had with

1 talking about Ocean State.

2 So we had the SBA detailed explanation
3 documents of the loan program with a whole bunch
4 of, you know, FAQs that specifically stated in
5 -- specifically stated affiliation requirements
6 are waived for those that already have an SBIC
7 loan from, you know, an SBIC guaranteed lender.

8 So we relied on that. We relied on our
9 bank helping us. We did rely on some legal
10 counsel and --

11 MR. MOORMAN: Don't get into anything
12 with --

13 THE WITNESS: Yeah, I'm not going to --
14 MR. MOORMAN: -- counsel. You can say
15 you consulted with counsel.

16 THE WITNESS: Yeah, and we consulted
17 among the portfolio of New Harbor Capital,
18 because everybody was looking at this, we
19 consulted with Deerpath, and they gave us a lot
20 of advice and counsel, because they were dealing
21 with a lot of their portfolio companies that
22 were dealing with this, so I'm very confident
23 that we were operating legally.

24 BY MR. RENNER:

25 Q. Okay. But my question was specifically

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1 with respect to the applicable laws and
2 regulations that Ocean State investigated, and
3 you mentioned the FAQs regarding affiliation?

4 A. Yeah.

5 Q. Other than that, any other laws and
6 regulations?

7 MR. MOORMAN: Again, don't answer this
8 question to the extent that the rules and
9 regulations were investigated by counsel you
10 retained to assist you in this process.

11 I also object that this question was
12 asked and answered.

13 He provided a full response to this
14 question.

15 THE WITNESS: Yeah, I told you what we
16 did, so --

17 BY MR. RENNER:

18 Q. All right. So the testimony is
19 complete on the record then?

20 A. Yeah.

21 Q. Okay. All right. So now I want to
22 talk about your dealings with the plaintiff,
23 James Berkley, and I believe you also had
24 interactions with his wife.

25 So this is in your personal capacity as

1 endless huge bank account that New Harbor had
2 that we could just tap into it, and I made it
3 clear to him that that's not how this works.

4 You know, they're an owner in the
5 business, and they choose to or choose not to
6 invest additional equity.

7 Q. So that's what you meant by that's not
8 how it works?

9 A. Yes.

10 Q. All right.

11 A. And then he turned off -- and then he
12 turned off our garbage collection and our
13 utilities.

14 Q. For nonpayment?

15 A. Because that's what he could do.

16 Q. Were there other conversations with Mr.
17 Berkley?

18 A. I mean, I think there was more than
19 one, there was more than one e-mail, but those
20 were the gists of the discussions.

21 Q. And at some point did you speak to his
22 wife, Heidi Berkley?

23 A. I think the first discussion was with
24 his wife.

25 Q. What was the nature of that discussion?

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1 opposed to your 30(b) (6) capacity.

2 A. Yeah.

3 Q. Can you describe for me the
4 communications you had with Mr. Berkley,
5 whether, you know, via e-mail or orally?

6 A. I think we might have talked on the
7 phone a few times, and I think we exchanged
8 e-mails a few times.

9 Never met in person.

10 Q. What were the nature of the telephone
11 conversations?

12 A. It was around our inability to pay our
13 rent, trying to negotiate, you know, rent
14 abatement.

15 Q. And do you recall the subject being
16 raised by Mr. Berkley of New Harbor Capital
17 contributing funds to pay the rent?

18 A. Yes.

19 Q. All right. What can you tell me about
20 those conversations?

21 A. Well, I tried to explain to him that
22 that's -- I think my exact words were that's not
23 how it works.

24 So, you know, he was under the
25 impression that there was this sort of an

1 A. It was letting them know that we were
2 unable to pay rent, and she -- as I remember it,
3 she was, you know, very upset about it, and said
4 that, you know, this is -- you know, we're just
5 a small investor, this is how we pay our -- you
6 know, this is how we pay for our lives, like,
7 you're going to make us go bankrupt.

8 Q. I have marked for the record -- I don't
9 need to question you about it -- but I have
10 marked for the record as Exhibit 19, Ocean
11 State's responses and objections to the 30(b) (6)
12 notice.

13 MR. MOORMAN: Understood.

14 (Whereupon, a discussion was had
15 off the record.)

16 MR. RENNER: That's all I have.

17 MR. MOORMAN: Okay. Can I ask some
18 questions?

19 It's okay if we go straight through?

20 MR. RENNER: Yes.

21 MR. MOORMAN: Okay. Great.

22 EXAMINATION

23 BY MR. MOORMAN:

24 Q. You can put that to one side, Mr.
25 Roselli.

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1 consult Ocean State's financial records, they
2 would show what they show, right, I mean,
3 they'll show, you know, financial performance in
4 2020 versus 2019?

5 MR. MOORMAN: You don't have to endorse
6 a document you have not seen.

7 If you need to see a document to answer
8 the question, you can say that.

9 THE WITNESS: Yeah, I guess, I would
10 need to see the document to actually --

11 BY MR. RENNER:

12 Q. I'm just saying in general.

13 A. You know, it's been a number of years
14 since all this transpired, so it's difficult for
15 me to say 20 -- how we did in 2020 versus '19,
16 so I'd prefer having the document in front of me
17 to answer that question.

18 Q. And fair enough. I appreciate that.

19 I'm not asking about a specific
20 document.

21 I'm just saying generally speaking,
22 that Ocean State's financial records will bear
23 out, you know, the financial performance of the
24 company?

25 MR. MOORMAN: Are you asking if the

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF RHODE ISLAND
3 UNITED STATES OF AMERICA)
4 ex rel. JAMES R.)
5 BERKLEY,)
6 Plaintiffs,)
7 vs.) No. 1:20-cv-00538
8 OCEAN STATE, LLC, NEW)
9 HARBOR CAPITAL FUND LP,)
10 NEW HARBOR CAPITAL FUND)
11 II LP, NEW HARBOR)
12 CAPITAL MANAGEMENT LP,)
13 BLUEPRINT TEST)
14 PREPARATION, LLC,)
15 FYZICAL ACQUISITION)
16 HOLDINGS, LLC,)
17 Defendants.)

18 I, JOHN ROSELLI, being first duly sworn,
19 on oath say that I am the deponent in the
20 aforesaid deposition taken on March 14, 2024;
21 that I have read the foregoing transcript of my
22 deposition, and affix my signature to same.

23 JOHN ROSELLI

24 Subscribed and sworn to
25 before me this day
of , 2024

Notary Public

1 financial records are accurate?

2 THE WITNESS: My --

3 MR. RENNER: Yeah, I mean, they show
4 what they show, right?

5 THE WITNESS: Yeah, my understanding is
6 you have the financial documents, and they'll
7 show what they show.

8 MR. RENNER: That's all I'm asking.

9 THE WITNESS: Okay.

10 MR. MOORMAN: All right. Are you done?

11 MR. RENNER: Done.

12 MR. MOORMAN: All done.

13 THE COURT REPORTER: Signature?

14 MR. MOORMAN: Yes, please.

15 (FURTHER DEPONENT SAITH NOT.)

16 (Proceedings concluded at 2:42 p.m.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)
4 I, MARY KAY ANDRIOPoulos, CSR, a notary
5 public within and for the County of Cook County
6 and State of Illinois, do hereby certify that
7 heretofore, to-wit, on March 14, 2024,
8 personally appeared before me, at 300 North
9 LaSalle Street, Chicago, Illinois, JOHN ROSELLI,
10 in a cause now pending and undetermined in the
11 United States District Court, for the District
12 of Rhode Island, wherein UNITED STATES OF
13 AMERICA ex rel. JAMES R. BERKLEY are the
14 Plaintiffs, and OCEAN STATE, LLC, NEW HARBOR
15 CAPITAL FUND LP, NEW HARBOR CAPITAL FUND II LP,
16 NEW HARBOR CAPITAL MANAGEMENT LP, BLUEPRINT TEST
17 PREPARATION, LLC, FYZICAL ACQUISITION HOLDINGS,
18 LLC are the Defendants.

19 I further certify that the said JOHN
20 ROSELLI was first duly sworn to testify the
21 truth, the whole truth and nothing but the truth
22 in the cause aforesaid; that the testimony then
23 given by said witness was reported
24 stenographically by me in the presence of the
25 said witness, and afterwards reduced to



1 typewriting by Computer-Aided Transcription, and
2 the foregoing is a true and correct transcript
3 of the testimony so given by said witness as
4 aforesaid.

5 I further certify that the signature to
6 the foregoing deposition was reserved by counsel
7 for the respective parties and that there were
8 present at the deposition the attorneys
9 hereinbefore mentioned.

10 I further certify that I am not counsel
11 for nor in any way related to the parties to
12 this suit, nor am I in any way interested in the
13 outcome thereof.

14 IN TESTIMONY WHEREOF: I have hereunto
15 set my verified digital signature this 20th day
16 of March, 2024.

17
18
19
20 MARY KAY ANDRIOPoulos, CSR
21
22 LICENSE NO. 084-0022248
23
24
25

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1 McCormle Court Reporters, Inc.
2 200 N. LaSalle Street Suite 770
3 Chicago, Illinois 60601-1014

4 DATE: March 20, 2024
5 KIRKLAND & ELLIS, LLP
6 MR. RYAN MOORMAN
7 300 North LaSalle Street
Chicago, Illinois 60654

8 IN RE: USA and BERKLEY V. OCEAN STATE, et al.
COURT NUMBER: 1:20-cv-00538
DATE TAKEN: MARCH 14, 2024
9 DEPONENT: JOHN ROSELLI
10 Mr. Moorman:
11 Enclosed is the deposition transcript for the
aforementioned deponent in the above-entitled
12 cause. Also enclosed are additional signature
pages, if applicable, and errata sheets.

13 Per your agreement to secure signature, please
14 submit the transcript to the deponent for review
and signature. All changes or corrections must
15 be made on the errata sheets, not on the
transcript itself. All errata sheets should be
16 signed and all signature pages need to be signed
and notarized.

17 After the deponent has completed the above,
18 please return all signature pages and errata
sheets to me at the above address, and I will
19 handle distribution to the respective parties.
20 If you have any questions, please call me at the
phone number below.

21
22 Sincerely,
23 Cynthia Alecia Court Reporter Present:
Signature Department Mary Kay Andriopoulos, CSR
24
cc: All counsel of record

25
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